

Remarks

Claims 1 to 3 and 6 to 15 are pending.

The Examiner rejected claims 1 to 3 and 6 to 14 as allegedly obvious under 35 U.S.C. § 103(a) over Friedl *et al.* (U.S. Patent Publication No. 2005/0089575) in view of Frisbee *et al.* (WO 99/17744). The Examiner also rejected claims 1, 14, and 15 as allegedly obvious under 35 U.S.C. § 103(a) over Friedl *et al.* in view of Frisbee *et al.*, and further in view of Gendron *et al.* (U.S. Patent Publication No. 2002/0137678), Parikh (Handbook of Pharmaceutical Granulation Technology), and the EPA Profile of the Pharmaceutical Manufacturing Industry (“EPA Profile”).

The Examiner seems to be relying on Friedl *et al.* as prior art under 35 U.S.C. § 102(e). Since Friedl *et al.* and the instant application were, at the time the current invention was made, both owned by C.H. Boehringer Sohn AG & Co. KG, which owns 100 percent of each of Boehringer Ingelheim International GmbH and Boehringer Ingelheim Pharma GmbH & Co. KG, under 35 U.S.C. § 103(c), Friedl *et al.* is not available as a reference under 35 U.S.C. § 103(a). Since all the Examiner’s obviousness rejections depend on Friedl *et al.*, all the pending claims are allowable. Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the rejections.

The Examiner also provisionally rejected claims 1 to 3 and 6 to 13 for nonstatutory obviousness-type double patenting over claims 1 to 13 of U.S.S.N. 11/560,059, in view of Frisbee *et al.*

In response, applicants enclose a terminal disclaimer with respect to U.S.S.N. 11/560,059 and respectfully request that the Examiner withdraw this provisional rejection.

Applicants submit that all the pending claims are allowable and respectfully solicit a Notice of Allowance for all of the pending claims. If the Examiner feels that a telephone interview would be helpful in advancing prosecution of this application, the Examiner is invited to contact the attorney below.

Respectfully submitted,

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